

CITY OF HARRINGTON
ORDINANCE NO. 17-14

AN ORDINANCE ADDING CHAPTER 216, FREEDOM OF INFORMATION ACT, TO THE CODE OF THE CITY OF HARRINGTON AND AMENDING CHAPTER 180, MUNICIPAL FEES, TO ADD RELATED FEES

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HARRINGTON IN COUNCIL MET:

Section 1. That the Code of the City of Harrington shall be amended by adding a new chapter to read as follows:

Chapter 216, Freedom of Information Act

§ 216-1. Purpose.

It is the intent of the City of Harrington that public business be performed in an open and transparent manner so that citizens can be informed about the decisions and performance of public officials. The purpose of this chapter is to prescribe procedures relating to the inspection and duplication of public records retained by the City of Harrington pursuant to Title 29, Delaware Code, Chapter 100, known as the State of Delaware Freedom of Information Act (FOIA). It is the City's goal in establishing this chapter to maximize the amount of information available to the public, establish a reasonable fee structure for providing public records, and streamline procedures used to disseminate this information. All employees shall comply with FOIA and all requests for information shall be processed in the manner prescribed in this chapter.

§ 216-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

EXEMPT

Information determined by the FOIA Coordinator and/or City Solicitor to constitute a record that shall not be deemed public in accordance with Title 29, Delaware Code, §10002(l).

FOIA COORDINATOR

The person designated by the City Manager to receive and process FOIA requests.

FREEDOM OF INFORMATION ACT (FOIA)

Title 29, Delaware Code, Chapter 100, known as the State of Delaware Freedom of Information Act.

PUBLIC RECORD

Information of any kind owned, made, used, retained, received, produced, composed, drafted, or otherwise compiled or collected by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded, or reproduced. See Title 29, Delaware Code, §10002(l) for exemptions to Public Records.

REQUESTOR

Any individual, organization, or business that submits a request for information under the Delaware Freedom of Information Act.

CITY

The City of Harrington.

§ 216-3. Availability of records.

A. Access to records.

- (1) Records shall be open to public inspection and duplication. The City will provide reasonable access and facilities for reviewing and duplicating public records during regular business hours.
- (2) The City shall make all requested records available for review by the Requestor unless such records or portions of records are determined by the FOIA Coordinator to be exempt pursuant to Title 29, Delaware Code, §10002(l).
- (3) If the requested record is not in active use and is in storage, then additional time and labor may be needed to allow access.

B. City records review.

- (1) Prior to disclosure, records will be reviewed to insure that those records or portion of records deemed non-public are removed.
- (2) The types of records deemed exempt are as contained in Title 29, Delaware Code, §10002(l).
- (3) City brochures, pamphlets, informational bulletins, and other such information are not subject to this chapter.

- C. Protection of public records; creation of records not required. In providing access to public records, the FOIA Coordinator may take necessary and reasonable action to protect the City's public records and to prevent excessive and unreasonable interference with the discharge of the City's functions. This chapter does not require the City to make a compilation, summary, or report of information or to create records that do not otherwise exist.

§ 216-4. Request for public records.

- A. Requests for access to records shall be made in writing to the FOIA Coordinator and shall adequately describe the record sought in sufficient detail to enable the City to locate the record with reasonable effort. The City shall make every reasonable effort to assist the Requestor in identifying the record being sought.
- B. If the FOIA Coordinator is not sure that a requested item is a public record, the request for documentation should be forwarded to the City Solicitor to determine if the requested documents are a public record within the meaning of FOIA.
- C. If the Requestor wants to review original materials, an appointment must be made with the FOIA Coordinator. A staff member shall be assigned to monitor the review to insure that the integrity of all materials is maintained. A monitor may be required at other times as the discretion of the City Manager or FOIA Coordinator. The Requestor will be charged for the staff time necessary to retrieve and monitor the review of public records (see § 216-5 D).
- D. Response to requests.
 - (1) The City shall make every reasonable effort to respond to a request within fifteen (15) business days of submittal.
 - (2) If the City denies a request in whole or in part, the City shall indicate to the Requestor the reasons for the denial.
- E. Appeals.
 - (1) Denied requests may be appealed by submitting to the City Council a written appeal that specifically indicates "Appeal of FOIA Request" and identifies the reason or reasons for reversal of the denial.
 - (2) The Requestor may proceed in accordance with Title 29, Delaware Code, § 10005.

§ 216-5. Fees.

- A. The City shall make every reasonable effort to comply with requests under FOIA but must charge the Requestor for costs incurred so that FOIA requests do not burden taxpayers with the costs to fulfill such requests.
- B. Fees for photocopies and printouts.
 - (1) Standard size paper (8.5" x 11", 8.5" x 14", or 11" x 17") as established in Chapter 180, Municipal Fees.
 - (2) Oversize paper copies/printouts. The City does not have the equipment to provide copies/printouts on paper larger than 11" x 17". The FOIA Coordinator may at his/her discretion arrange to have records duplicated by an outside vendor with all associated costs paid by the Requestor.
- C. Fees for computer/electronically generated records.
 - (1) Charges for duplicating records maintained in an electronic format will be calculated by the actual material costs involved in generating the copies (including, but not limited to, DVD, CD, or other electronic storage costs).
 - (2) In the event that requests for records maintained in an electronic format can be electronically provided to the Requestor, such as sent via email, only the administrative fees in preparing the electronic records will be charged.
- D. Administrative fees. In calculating the cost of labor incurred, the City may not charge more than the hourly wage of the lowest paid City employee capable of retrieving the information necessary to comply with the request. Labor charges will be billed to the Requestor per quarter hour. Labor charges will be in addition to any copying/printing or materials charges. Charges for actual labor costs include:
 - (1) Staff time associated with processing FOIA requests;
 - (2) Locating and reviewing files;
 - (3) Monitoring a Requestor's review of original materials;
 - (4) Generating computer records (electronic or printouts); and
 - (5) Any other time rendered by the employee in researching, examining, developing, duplicating, reviewing, and separating exempt from non-exempt information that has been requested.

E. Other costs.

- (1) Any other actual costs associated with fulfilling a request for information, such as postage, shall be at the expense of the Requestor.
- (2) If the City does not have the resources or equipment to duplicate requested records, the City, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the Requestor will be liable for payment of these costs.

F. Waiver of fees.

- (1) The FOIA Coordinator shall have the authority to determine if a fee for a FOIA request shall be waived and the following criteria shall be used to render such a decision:
 - (a) The public record is already available in duplicate form (extra copies); or
 - (b) The fee is five dollars (\$5) or less; this waiver may be granted only once per year per Requestor.
- (2) No written request will be required or charges levied for requests to review specific documents which are required by ordinance to be made available to the public by the City administrative staff.

G. Payment.

- (1) The Requestor shall be provided an estimate of the copying/printout, materials, and administrative costs involved to fulfill their FOIA request if the estimate exceeds ten dollars (\$10) or if the Requestor indicates that they are to be notified if the fee will exceed a lesser amount. The Requestor shall be notified if the estimated amount will be exceeded prior to the additional costs being incurred.
- (2) Prepayment of the estimated fees is required for requests that have estimated fees greater than ten dollars (\$10). The fee must be received before research commences.
- (3) Payment of all fees is due before records are released to the Requestor.
- (4) Refunds will be issued to Requestors that have fees less than the estimated fees paid.
- (5) The City reserves the right to refuse to fulfill FOIA requests for Requestors that have outstanding balances for previous FOIA requests.

Section 2. That § 180-1 A shall be amended to add the new classifications and to read as follows:

General Fees, Fines

City of Harrington Fee Categories	Base Fee	Escrow Account Amount	Total Owed	Subject to Professional Fees
FOIA request				
Standard size copies/printout, black and white, per page	\$.30	\$0	\$.30	No
Standard size copies/printout, color, per page	\$1.00	\$0	\$1.00	No
Labor, materials, and other costs charged at cost	At cost	\$0	At cost	No

Repealer. All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Effective Date. The Clerk of Council shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take effect and be in force from and after its approval by Council. SO ORDAINED by the majority of Council Members present at a regular session of Harrington City Council, to be effective upon signing.

Anthony R. Moyer, Mayor

Attest: _____
Kelly Blanchies, Clerk of Council

Date of Adoption: _____

SYNOPSIS

This Ordinance adds Chapter 216, Freedom of Information Act, to prescribe procedures and fees relating to the inspection and copying of public records maintained by the City of Harrington and adds the fees for copies/printouts to Chapter 180, Municipal Fees.

First Reading: _____

Public Hearing: _____

Second Reading: _____